87-2092

Supreme Court, U.S.
FILED
MAY 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. .....

IN THE

Supreme Court Of The United States

October Term, 1987

WILLIAM L. ANDERSON,
Plaintiff-Appellant,
Pro se

v.

ALABAMA STATE PERSONNEL BOARD, HALYCON V. BALLARD AS ITS DIRECTOR; JOYCE CLEMENTS, DIRECTOR, JEFFERSON COUNTY DEPARTMENT OF HUMAN RESOURCES; ALSO, MARY LOU KEVORKIAN, DEPUTY DIRECTOR JEFFERSON COUNTY DEPARTMENT OF HUMAN RESOURCES,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE NO. 87-7536

PETITION FOR WRIT OF CERTIORARI

WILLIAM L. ANDERSON
Plaintiff - Pro Se - Appellant
3552 43rd Avenue North
Birmingham, Alabama 35207
Telephone: (205) 841-5203

JURISDICTIONAL QUESTION

Was not the District Court's, and subsequently, the Appeal Court's rationale for Summary Judgment faulty; Thus depriving the plaintiff-appellant of Due Process and Equal Protection Of The Law?

Delcaring defendants immune by extension of the Eleventh Amendment to the United States Constitution can not be a fair evaluation of the merits of this case. Therefore the prior proceedings should not be adequate to support the ruling of *res judicata* which should be viewed as a political ploy to deprive plaintiff-appellant of Due Process and Equal Protection of the Law.

CERTIFICATE OF INTERESTED PERSONS

I hereby certify that, to the best of my knowledge, information and belief, there are no persons, firms or corporations interested in this appeal except:

William L. Anderson, Plaintiff-Appellant

Alabama State Personnel Board, Halcyon V. Ballard as its Director, Defendant-Appellee

Joyce Clements, Director, Jefferson County Department of Human Resources, Defendant-Appellee

Mary Lou Keverian, Deputy Director, Jefferson County Department of Human Resources, Defendant-Appellee

William Prendergast, Esq., counsel for Defendants, Joyce Clements and Mary Lou Keverian

Sharon E. Ficquette, Esq., counsel for Defendants, Joyce Clements and Mary Lou Keverian

T. Dudley Perry, Esq., Special Assistant Attorney General, counsel for Defendants, Alabama State Personnel Board, Halcyon V. Ballard as its Director

Robert B. Propst, United States District Judge

TABLE OF CONTENTS

	Page
Jurisdictional Question	i
Certificate of Interested Persons	ii
Table of Authorities	iv
Statement of Jurisdiction	1
Statement of the Case	2
Argument	3
Conclusion	5
Certificate of Service	6
Appendix	A-1

TABLE OF AUTHORITIES

Cases: *Page*

Board of Education of Marshall County v. Baugh, 240 Ala. 391, 395, 199 So. 822, 825 (1941) 3

Chavers v. State Personnel Board, 357 So. 2d 662 (Ala. Civ. App.) *cert. denied*, 357 So. 2d 664 (Ala. 1978) 2

Monell v. Department of Social Services of the City of New York, 436 U.S. 659 ..... 2, 4

No. .....

IN THE

Supreme Court Of The United States

October Term, 1987

WILLIAM L. ANDERSON,
Plaintiff-Appellant,
Pro se

v.

ALABAMA STATE PERSONNEL BOARD, HALYCON V. BALLARD AS ITS DIRECTOR; JOYCE CLEMENTS, DIRECTOR, JEFFERSON COUNTY DEPARTMENT OF HUMAN RESOURCES; ALSO, MARY LOU KEVORKIAN, DEPUTY DIRECTOR JEFFERSON COUNTY DEPARTMENT OF HUMAN RESOURCES,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE NO. 87-7536

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF JURISDICTION

Jurisdiction of this cause is based on federal question jurisdiction pursuant to U.S.C. Sections 1252, 1253, 1331, 1343.

The original proceeding was in the United States District Court for the Northern District of Alabama, Southern Division. The Eleventh Circuit Court of Appeals affirmed the district court decision on April 6, 1988.

STATEMENT OF THE CASE

Appellant Anderson was illegally fired by . . . other than his appointing authority, as is required by State law (*Chavers v. State Personnel Board of the State of Alabama*, 357 So. 2d 662 (Ala. App. Ct. 1978)). The evidence against Anderson did not support any misbehavior or any wrong doing by Anderson who was accused of telephone rudeness. Viewed in a legal sense this evidence should not constitute a "cause" for dismissal. Appellant Anderson was denied *Equal Protection of the Law* and systematically deprived of property, 106 months of property interest in state employment and the state retirement system without *DUE PROCESS*.

Appellant Anderson filed an action in federal court under 42 U.S.C. § 1983 on October 16, 1986. (*Anderson v. Alabama State Personnel Board*, CV 86-G-1925-S) In that case Judge Guin granted motions for summary judgment, holding that the named director, Halycon V. Ballard and the State Personnel Board is *immune from suit by operation of the Eleventh Amendment of the United States Constitution*. Appellant, Pro Se, Anderson did not appeal this action. Subsequently, Anderson filed an action in this instance under 42 U.S.C. § 1981, 1982.

Appellant Anderson now contends that res judicata should not apply when the merits of the case were not examined, since the defendants were declared "immune by extension of the Eleventh Amendment to the United States Constitution," contrary to the recent Supreme Court decision in *Monell v. Department of Social Services of the City of New York, et al.*, 436 U.S. 659.

Appellant Anderson was directed by his supervisor to obtain information from persons calling in to report cases of suspected elder abuse. Further, Anderson is restricted by state law - policy regarding confidentiality of cases. Subsequently, Anderson is accused of telephone rudeness. The administrative hearing violated state law when they used material more than three

years old against Anderson. However, none of the evidence supported any misbehavior by Anderson. Or, even accused Anderson of misbehavior.

ARGUMENT

Appellant Anderson, a black male, was employed as a social worker III with the Department of Human Resources since June of 1977. In June of '82 Anderson was reassigned to a new position where he was required to question callers to obtain information while being mindful of state law and agency policy regarding confidentiality of case records. Anderson is subsequently fired when several persons complain about his telephone manners. Anderson's administrative hearing was a series of complaints that did not accuse him of any misbehavior (See Personnel Board Hearing). The witnesses expressed dissatisfaction with the conversations but were unable to point to any behavior by Anderson that was "Wrong". Thus, the evidence had no probative value. However, Anderson was fired.

Appellant Anderson claims that the decision to find the evidence sufficient for dismissal from state employment was an overt act of *racial, sexual, and age discrimination* directed toward a black male working in a predominantly white female managed agency. The State Personnel Board, by state law is required to evaluate each case on the evidence, to judge whether to uphold or overrule the actions of the various county appointing authorities. The county appointing authorities can not delegate their authority to fire personnel (*Board of Education of Marshall County v. Baugh*, 240 Ala. 391, 395, 199 So. 822, 825 (1941)).

Thus Anderson was illegally terminated, denied EQUAL PROTECTION of the LAW, deprived of DUE PROCESS and 106 months of property interest in the state retirement system and state merit system.

In *Anderson v. State Personnel Board*, CV 86-G-1925-S the court determined the defendants were immune from suit by

extension of the Eleventh Amendment to the United States Constitution. This court refused to consider *Monell v. Social Service Department of N.Y. et al.*, which held otherwise.

Appellant Anderson now contends that res judicata and the defense of "immunity by extension of the Eleventh Amendment to the United States Constitution is wrong and that *Monell v. Department of Social Services of the City of N.Y., et al.* should prevail.

CONCLUSION

Appellant Anderson was summarily, illegally, terminated from 106 months of state employment on evidence that, viewed in a legal sense, would not substantiate "misbehavior" sufficient to deprive appellant of merit system and retirement system benefits. Plaintiff, appellant Anderson contends that the decision to find the evidence against him sufficient to support firing him was overt racial discrimination. Appellant Anderson was deprived of DUE PROCESS and EQUAL PROTECTION OF THE LAW. Defendants have used their political clout to have appellants efforts to obtain justice suppressed.

WHEREFORE, Appellant Anderson Pray this Court:

1. Find the Courts findings and conclusions are contrary to the uncontradicted evidence, and that they improperly applied those findings, viewed in a legal sense.
2. Grant plaintiff a declaratory judgment that the actions of the defendants complained of herein violated the rights of appellant Anderson to EQUAL PROTECTION OF THE LAW / DUE PROCESS.
3. Grant appellant Anderson such other relief as may be necessary and proper, including, but not limited to re-employment, back pay, and other benefits denied to him in this mis-carriage of justice.
4. Award appellant Anderson the cost of action herein, and that such other relief be granted as is possible herein.

William L. Anderson, Pro Se
3552 43rd Avenue North
Birmingham, Alabama 35207

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing PETITION FOR WRIT OF CERTIORARI upon the following by mailing copies thereof by U. S. Mail, postage prepaid on this the 25th day of April, 1988.

William Prendergast
Assistant Attorney General
State of Alabama

Sharon E. Ficquette
Assistant Attorney General
State of Alabama

State Department of Human Resources
64 North Union Street
Montgomery, Alabama 36130-1801

T. Dudley Perry
Special Assistant Attorney General
111 Washington Avenue
Montgomery, Alabama 36104

Respectfully submitted,

William L. Anderson
Plaintiff - Pro Se - Appellant
3552 43rd Avenue North
Birmingham, Alabama 35207
Telephone: (205) 841-5203

APPENDIX

DESIGNATION OF MATERIALS TO BE INCLUDED IN APPENDIX

UNITED STATES SUPREME COURT

CASE # .....

WILLIAM L. ANDERSON
Plaintiff - Appellant,
Pro se

v.

ALABAMA STATE PERSONNEL BOARD, HALYCON V. BALLARD as its DIRECTOR; JOYCE CLEMENTS, DIRECTOR, JEFFERSON COUNTY DEPARTMENT OF HUMAN RESOURCES: also, MARY LOU KEVORKIAN, DEPUTY DIRECTOR, JEFFERSON COUNTY HUMAN RESOURCES.
Defendants - Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE NO. 87-7586

WILLIAM L. ANDERSON, Petitioner in the above captioned proceedings designates the following materials from the record in Docket 87-7586 before the Eleventh Circuit Court of Appeals for inclusion in the appendix, pursuant to FRAP 30.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

EXHIBIT C

WILLIAM L. ANDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 86-G-1925-S
ALABAMA STATE PERSONNEL	)	
BOARD, HALYCON V. BALLARD	)	
as its Director, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING SUMMARY JUDGMENT

This cause came before the court on a "motion to dismiss, for judgment on a pleading, or in the alternative, for full or partial summary judgment" filed by defendants Joyce Clements and Mary Lou Kevorkian which has been treated by this court as a motion for summary judgment. Having considered the motion, pleadings and submissions of counsel for the defendants, this court is of the opinion that summary judgment should be granted the defendants as a matter of law, there being no genuine issue of material facts. In reaching this decision, the court has noted that the named defendants Clements and Kevorkian are sued in their official capacities, not as individuals, and as such they are entitled to sovereign immunity by extension of the eleventh amendment to the United States Constitution, interpretation of which covers employees of the State. Accordingly, it is

ORDERED, ADJUDGED and DECREED that summary judgment be and it hereby is entered in favor of defendants

Joyce Clements, Director, Jefferson County Department of Human Resources, and Mary Lou Kevorkian, Deputy Director, Jefferson County Department of Human Resources, and against the plaintiff, and plaintiff shall have and recover nothing of said defendants in this action.

DONE and ORDERED this 31st day of December 1986.

/s/ J. Foy Guin, Jr.

United States District Judge
J. Foy Guin, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

WILLIAM L. ANDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 86-G-1925-S
ALABAMA STATE PERSONNEL BOARD, HALYCON V. BALLARD as its DIRECTOR,	)	
	)	
Defendants.	)	

FINAL ORDER GRANTING SUMMARY JUDGMENT

This cause came before the court on a motion for summary judgment filed by defendants Alabama State Personnel Board and Halycon V. Ballard as its Director. Title 42 U.S.C. § 1983 claims are subject to dismissal because sovereign immunity denies the court jurisdiction to award damages or injunctive relief against a state official or against the state. Since the State Personnel Board, an arm of the state, is immune from suit by operation of the eleventh amendment to the United States Constitution, and Halycon V. Ballard is sued in her official capacity as director of the agency, there is no genuine issue of material fact and defendants are entitled to judgment as a matter of law. Accordingly, it is

ORDERED, ADJUDGED and DECREED that the motion for summary judgment filed by defendants Alabama State Personnel Board and Halycon V. Ballard as its Director be and it hereby is GRANTED.

It is FURTHER ORDERED that the plaintiff's outstanding motions for summary judgment be and they hereby are

MOOTED by the granting of summary judgment in favor of the defendants.

There being no just cause for delay in entering final judgment, it is

FURTHER ORDERED that FINAL JUDGMENT be and it hereby is entered in favor of the defendants and against the plaintiff, and plaintiff shall have and recover nothing of the defendants.

DONE and ORDERED this 1st day of April 1987.

/s/ J. Foy Guin, Jr.

United States District Judge
J. Foy Guin, Jr.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 87-7586
Non-Argument Calendar

D.C. Docket No. 87-1256

WILLIAM L. ANDERSON,

Plaintiff-Appellant,

versus

ALABAMA STATE PERSONNEL BOARD,
HALYCON V. BALLARD as its Director;
JOYCE CLEMENTS, DIRECTOR, JEFFERSON
COUNTY DEPARTMENT OF HUMAN RESOURCES;
also MARY LOU KEVERIAN, Deputy Director,
JEFFERSON COUNTY DEPARTMENT OF HUMAN
RESOURCES,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(April 6, 1988)

Before KRAVITCH, JOHNSON and ANDERSON, Circuit Judges.

PER CURIAM:

The events leading to this case began on April 25, 1986, when Anderson was fired from his job as a social worker with the Alabama Department of Human Resources. Anderson first pursued his state administrative remedies, but the State Personnel Board ultimately upheld his firing. Then, on October 16, 1986, Anderson brought a 42 U.S.C. § 1983 action (here-

inafter referred to as Case I) in the Northern District of Alabama alleging that the firing violated his rights to due process and equal protection. The defendants in Case I were the Alabama State Personnel Board, the Board's Director, Halycon Ballard, and two officials of the Jefferson County office of the Department of Human Resources, Joyce Clements and Mary Lou Kevorkian. On December 31, 1986, and April 1, 1987, Judge Guin granted the defendants' motions for summary judgment holding that the defendants were immune from suit under the Eleventh Amendment.

Instead of appealing the judgment in Case I, Anderson chose to file a new action, the instant suit, in the Northern District of Alabama on July 21, 1987. This new case was assigned to Judge Propst. It was virtually identical to Case I except that it was brought under 42 U.S.C. §§ 1981 and 1982 rather than § 1983. The defendants moved for dismissal on grounds of *res judicata*, and the court converted the dismissal motions to motions for summary judgment. On September 15, 1987, Judge Propst granted summary judgment for the State Personnel Board and Ballard. On September 21, 1987, Judge Propst amended the judgment to include defendants Clements and Kevorkian. Judge Propst found that Case I was *res judicata* and that it barred the instant action.

We affirm Judge Propst's decision. "In order for the doctrine of *res judicata* to bar a subsequent suit, four elements must be present: (1) there must be a final judgment on the merits, (2) the decision must be rendered by a court of competent jurisdiction, (3) the parties, or those in privity with them, must be identical in both suits, and (4) the same cause of action must be involved in both cases. [citations omitted]." *I. A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541, 1549 (11th Cir. 1986). These four elements are present in this case.

The grant of summary judgment as to all defendants in Case I was a final decision on the merits. The United States District Court for the Northern District of Alabama was a court of competent jurisdiction in Case I. The parties were

identical in both suits. Both suits alleged the same cause of action. Even though Anderson brought the instant action under §§ 1981 and 1982 rather than § 1983, we conclude that the suits alleged the same cause of action because the instant action arose out of the same conduct complained of in Case I. *See Kilgoar v. Colbert County Board of Education*, 578 F.2d 1033, 1035 (5th Cir. 1978).[1]

For the foregoing reasons the judgment of the district court is AFFIRMED.

---

[1]This case was decided prior to the close of business on September 30, 1981, and is binding precedent under *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

CASE NO.

UNITED STATES SUPREME COURT

APPENDIX

ORDER GRANTING SUMMARY JUDGMENT: Dec. 31, 1986.

FINAL ORDER GRANTING SUMMARY JUDGMENT: Apr. 01, 1987.

BEFORE KRAVITCH, JOHNSON AND ANDERSON: Circuit Judges, Per Curiam.

May 1988.

Respectfully submitted,

/s/ WILLIAM L. ANDERSON

William L. Anderson,
Appellant Pro se
3552 43rd Avenue North
Birmingham, Al. 35207
Tele. # 205-841-5203